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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No. *2010-353*

13 **EDWARD SANCHEZ PADILLA**
14 3057 N. Dewey Ave.
Fresno, CA 93727

PETITION TO REVOKE PROBATION

15 Registered Nurse License No. 807941

16 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Petition to Revoke
21 Probation solely in her official capacity as the Executive Officer of the Board of Registered
22 Nursing ("Board"), Department of Consumer Affairs.

23 2. On or about October 14, 2011, the Board issued Registered Nurse License Number
24 807941 to Edward Sanchez Padilla ("Respondent"). Respondent's registered nurse license will
25 expire on October 31, 2013, unless renewed.

26 3. In a disciplinary action entitled "In the Matter of the Statement of Issues Against:
27 Edward Sanchez Padilla," Case No. 2010-353, the Board issued a Decision After Non-Adoption,
28 effective August 21, 2011, in which Respondent's application for licensure as a registered nurse

1 was granted. The Board further ordered that Respondent's license shall be immediately revoked
2 (upon issuance), the order of revocation stayed, and Respondent placed on probation for a period
3 of three (3) years with terms and conditions. A copy of that decision is attached as Exhibit A and
4 is incorporated by reference.

5 4. Condition 11 of Respondent's probation states:

6 If a respondent violates the conditions of his probation, the Board after
7 giving the respondent notice and an opportunity to be heard, may set aside the stay
8 order and impose the stayed discipline (revocation/suspension) of the respondent's
9 license.

10 If during the period of probation, an accusation or petition to revoke
11 probation has been filed against respondent's license or the Attorney General's Office
12 has been requested to prepare an accusation or petition to revoke probation against
13 the respondent's license, the probationary period shall automatically be extended and
14 shall not expire until the accusation or petition has been acted upon by the Board.

15 5. Grounds exist to revoke Respondent's probation and reimpose the order of revocation
16 of his registered nurse license in that he has violated the terms and conditions of his probation, as
17 follows:

18 **FIRST CAUSE TO REVOKE PROBATION**

19 **(Failure to Comply With the Board's Probation Program)**

20 6. Condition 2 of Respondent's probation states, in pertinent part, that Respondent shall
21 fully comply with the conditions of the Probation Program established by the Board and
22 cooperate with representatives of the Board in its monitoring and investigation of the
23 Respondent's compliance with the Board's Probation Program.

24 7. Respondent's probation is subject to revocation in that he has failed to fully comply
25 with the conditions of his Probation Program and cooperate with the Board's representatives in
26 their monitoring and investigation of Respondent's compliance with the program, as set forth in
27 paragraphs 8 through 11 below.

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1 **SECOND CAUSE TO REVOKE PROBATION**

2 **(Failure to Abstain From the Consumption of Alcohol)**

3 8. Condition 15(B) of Respondent's probation states, in pertinent part, that Respondent
4 shall completely abstain from the possession, injection, or consumption by any route of all
5 psychotropic (mood altering) drugs, including alcohol.

6 9. Respondent's probation is subject to revocation in that he failed to completely abstain
7 from the consumption of alcohol by testing positive for Ethyl Glucuronide (EtG) and Ethyl
8 Sulfate (EtS) on October 24, 2012, during random, biological fluid testing (EtG and EtS are direct
9 metabolites or biomarkers of ethyl alcohol).

10 **THIRD CAUSE TO REVOKE PROBATION**

11 **(Failure to Submit to Tests and Samples)**

12 10. Condition 15(C) of Respondent's probation states, in pertinent part, that Respondent,
13 at his expense, shall participate in a random, biological fluid testing or drug screening program
14 which the Board approves. The length of time and frequency will be subject to approval by the
15 Board. Any confirmed positive finding shall be reported immediately to the Board by the
16 program and Respondent shall be considered in violation of probation. In addition, Respondent,
17 at any time during the period of probation, shall fully cooperate with the Board or any of its
18 representatives, and shall, when requested, submit to such tests and samples as the Board or its
19 representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or
20 other controlled substances.

21 11. Respondent's probation is subject to revocation in that he failed to participate in .
22 random, biological fluid testing as directed by the Board's representative on June 17, 2012.
23 Further, Respondent failed to call in to the testing facility on May 20, 2012, as required.

24 **PRAYER**

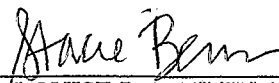
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Revoking probation and reimposing the order of revocation of Registered Nurse
28 License Number 807941, issued to Edward Sanchez Padilla;

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2. Taking such other and further action as deemed necessary and proper.

DATED: APRIL 18, 2013

for 
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2012109168
11042507

Exhibit A

Decision after Non-Adoption

Board of Registered Nursing Case No. 2010-353

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

EDWARD SANCHEZ PADILLA

Respondent.

Case No. 2010-353

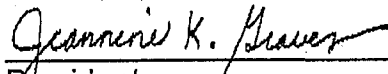
OAH No. 2010071112

DECISION AFTER NON-ADOPTION

The attached Decision After Non-Adoption is hereby adopted by the Board of
Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on August 21, 2011.

IT IS SO ORDERED this 22nd day of July 2011.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

EDWARD SANCHEZ PADILLA

Respondent.

Case No. 2010-353

OAH No. 2010071112

DECISION AFTER NONADOPTION

Administrative Law Judge Linda A. Cabatic, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on January 4, 2011. Janice K. Lachman, Supervising Deputy Attorney General, represented complainant Louise R. Bailey, M.Ed., RN, (complainant), Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs. Respondent was present and represented himself.

This matter arises as a result of the Board's denial of respondent's application because of two criminal convictions. Evidence was received, and the matter was submitted for decision on January 4, 2011.

On January 21, 2011, Administrative Law Judge Linda A. Cabatic issued her Proposed Decision. On April 18, 2011, the Board issued its Notice of Non Adoption of the Proposed Decision. On May 4, 2011, the Board issued its Order Fixing Date for Submission of Written Argument. After review of the entire administrative record including the transcript and written argument from Janice K. Lachman, Supervising Deputy Attorney General, the Board hereby renders its decision in this matter. Respondent did not submit written argument.

FACTUAL FINDINGS

1. On July 29, 2009, respondent submitted his application for licensure by examination to the Board.
2. On August 28, 2009, the Board denied respondent's application for licensure by examination based upon two misdemeanor criminal convictions involving the use of alcohol and a motor vehicle.

3. On March 26, 2010, complainant issued a Statement of Issues against respondent denying his application for licensure by examination by the Board.

4. Respondent appealed the Statement of Issues denying his application for licensure by examination by the Board.

5. On or about September 2, 2010, the Board served respondent with a Notice of Hearing, setting the matter for hearing on January 4, 2011.

Criminal Convictions

6. On September 11, 2007, respondent pled guilty to the charge of violating Vehicle Code section 23103, subdivision (a) [reckless driving], a misdemeanor. Judgment and sentencing were suspended for a period of 36 months and respondent was placed on conditional probation for 36 months. Respondent was ordered to serve 90 days in the Fresno County jail, but the order was stayed and sentence suspended pending successful completion of the terms of probation. Respondent was ordered to pay a fine of \$539.00 and a \$100 fee for the Restitution Fund.

Respondent was required to obey all laws; attend and complete a 12-hour Alcohol and Drug Program; to not drive without a valid drivers' license and proof of valid insurance; to not drive with any measurable amount of alcohol or drugs and to submit to chemical tests upon demand.

7. At the hearing, respondent stated he had a blood alcohol level of .07 percent on the night he was arrested and had too many drinks at a dinner party. He stated he should have taken a taxi home or obtained a ride from a friend who was not drinking. He said there were no excuses for his conduct. Respondent stated he paid all the fines and attended the 12-hour Alcohol and Drug Program.

8. On September 18, 2008, respondent pled guilty to the charge of violating Vehicle Code section 23152, subdivision (b), [driving a vehicle with a blood alcohol level of more than 0.08 percent], a misdemeanor, with a prior conviction. Respondent's blood alcohol level was .12 percent. The Court suspended imposition of judgment and sentencing for a period of three years and placed respondent on three years conditional probation and imposed the following terms and conditions upon respondent. Respondent was ordered to serve 10 days in Fresno County Jail, but the order was stayed until January 13, 2009. Respondent was re-referred to the Adult Offender Work Program and to pay fines and fees in the amount of \$1,709.00 (\$1,424.00 fine, \$100 fee for the Alcohol Assessment Program, a fee of \$50 for the Alcohol Abuse Education program and \$100 for the Restitution Fund.) The fine was reduced to \$737 on the condition that respondent completes the DUI class.

Respondent was ordered to obey all laws; attend and complete 18-month Multiple Offender Alcohol Program; not drive without a valid driver's license or proof of insurance; not drive with a measurable amount of alcohol or drugs in his blood and submit to testing;

not to use or possess alcoholic beverages and not be present in any establishment where the primary items for sale are alcoholic beverages.

9. Respondent received his second conviction while he was on probation for his first offense. He attributed his second conviction to stress: his mother had terminal cancer; he was caring for his mother during her illness; he was working full time; and attending nursing classes. He stated he had no excuses and that it was an error in judgment on his part. Respondent has completed all the court ordered classes and paid all the fines. Respondent's driver's license was suspended for one year.

10. For the past ten and a half years, respondent has worked at the Community Regional Medical Center in Fresno in the Level One Trauma and Burn Section as a Patient Care Assistant (PCA). As such, he was familiar with the consequences of drinking and driving.

11. Initially, respondent was required to have and had an Emergency Medical Technician (EMT) Certificate I license. When his EMT certificate expired, he transferred into a nursing extern position and began the nursing program at Fresno City College in 2007, where he received his Associate Arts degree. Respondent did not graduate from high school, but passed the General Educational Development tests (GED) and received his GED in 2006.

12. In the approximately ten and a half years of employment at the Community Regional Medical Center, respondent received two letters in his file, one in 2002 when a combative patient bit him and respondent had to hit the patient in order to secure his release from the patient's bite; and in 2006 regarding his attendance. Neither incident resulted from alcohol abuse and he has not had any job-related incidents since 2006.

13. Having attended the court ordered classes, having suffered the consequences resulting from his two convictions for alcohol, and having his driver's license suspended for a year, respondent has a better appreciation for the dangers of drinking and driving.

14. Respondent's loss his driver's license for a year had a big impact on his use of alcohol. Alcohol is not a big part of respondent's life. The consequences resulting from his convictions were an eye opening experience for him. He realizes he could have lost a lot more and is constantly reminded of the consequences of drinking and driving as a result of his work in the emergency room. Respondent no longer drinks alcohol when he drives.

15. Respondent has a son that is 15 years old who lives with him half time. Since his son is reaching driving age, he had a serious discussion with him about the use of alcohol. Explaining the consequences of his mistakes to his son was difficult.

16. Respondent has learned to deal with stress in other ways such as going to the gym or going hiking, biking or doing other things. He has a girlfriend, who also works in the emergency room. His employers have been supportive of him. If he is granted an interim license, he would like to continue working at the medical center. He has taken on the

hazardous materials training for the hospital. Respondent would like to further his education and get his Bachelors degree and some day, teach nursing.

17. Respondent called no witnesses, but submitted a letter of support from Shari Warner, R.N., the Clinical Supervisor of the Emergency Department at Community Regional Medical Center. Ms. Warner has worked with respondent for approximately ten and a half years as his supervisor. She stated that respondent is self-motivated and reliable and has been a great resource for the other PCA's and the nursing staff in the department. She stated respondent played an instrumental part in establishing their Hazmat Response Team and noted that he worked very hard to get through nursing school while working full-time and caring for his terminally ill mother.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 permits a board to deny a license on the grounds that the applicant has been convicted of a crime by way of a plea or verdict of guilty. Business and Professions Code 2761, subdivision (f) provides that the board may deny an application for a certificate of licensure if an applicant is convicted of an offense substantially related to the qualifications, functions and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

2. Further, section 2762, subdivision (b) provides that it is unprofessional conduct for a person licensed under this chapter to use alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any person, or the public to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license. Moreover, subdivision (c) of Business and Professions Code section 2762 states that it is unprofessional conduct for a person license under this chapter to be convicted of a criminal offense involving the self administration of alcohol pursuant to subdivision (b).

3. Section 1444 of title 16 of the California Code of Regulations provides:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety or welfare. Such convictions or acts shall include but not limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order or registration pursuant of Section 290 of the Penal Code.

4. Respondent's two misdemeanor convictions fall squarely within the proscriptions of Business and Professions Code sections 480, 2761, and 2762, subdivisions (b) and (c). Respondent was convicted for consuming alcoholic beverages in a manner that could have been injurious to him, any person or to the public. He was convicted of reckless driving and then approximately one year later, he was convicted of driving with a blood alcohol level of more than .08 percent.¹ Both of these convictions are acts that if committed by a licensee, would be considered substantially related to the qualifications, functions or duties of a registered nurse. At the time of respondent's convictions, respondent had been working in the emergency room for several years and had been substantial firsthand experience with the consequences of alcohol and driving. (Findings 6, 7, 8, 9, 10 and 11; Legal Conclusions 1, 2 and 3.) Indeed, respondent was on probation at the time he committed his second violation. (Findings 6 and 8.) Cause therefore exists to deny respondent his license.

5. In October of 2002, the Board adopted Recommended Guidelines for Disciplinary Orders and Conditions of Probation. The purpose for the guidelines is to fulfill its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse.² The Board carefully considers the totality of the acts and circumstances in each individual case, with the safety of the public being paramount.

6. In determining whether revocation, suspension or probation is to be imposed in a given case --- or in this case, a denial --- factors such as the following should be considered:

1. Nature and severity of the act (s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.

¶...¶

5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.

¹ Respondent's second conviction changed the reckless driving to a conviction for driving under the influence of alcohol.

² The language contained in the guidelines suggests that the guidelines are intended to apply to licensees. The guidelines do not, for the most part, address whether they apply to license applicants. Since the primary policy interest underlying the guidelines is the safety of the public, and since that interest would seem also to be implicated in cases involving license applicants, the guidelines are deemed generally applicable, at least by analogy, to this proceeding.

9. Overall criminal record.

10. Time passed since the act(s) or offense(s) occurred.

11. If applicable, evidence of expungment proceedings pursuant to Penal Code section 1203.4.

7. Viewing this matter under the guidelines, respondent was convicted of two misdemeanors, which had the potential of harming the public, although respondent does not have his license. Luckily, no one was injured. Respondent's convictions occurred in 2007 and 2008 and no subsequent convictions have occurred. Respondent is still, however, on probation until September 2011. Respondent has paid all fines and fees, completed the requisite classes and continues to be employed in the medical field. (Findings 6, 7, 8, and 9.)

8. Respondent fully accepted responsibility for his conduct and stated the convictions resulted from errors in judgment and stress. Respondent's loss of his driver's license and the court ordered classes provided him with a different perspective and he has learned to deal with his stress in other ways. He accepted responsibility for his conduct; has been employed in the medical field for approximately ten and a half years, has earned his GED and his nursing degree. (Finding 10, 11, and 13.) Alcohol is not a big part of his life and his son has been a big influence on him in dealing with his past mistakes. (Findings 13 and 14.) Respondent's employer is supportive of him and he is in charge of the hazardous materials training for the hospital. (Findings 16 and 17.) His supervisor's letter states respondent is self motivated and reliable and that he is a great resource for the other PCA's and the nursing staff in the department. (Finding 17.) Respondent has a good support group and was sincere in his desire to change and become a contributor to his community. (Findings 15 and 16.)

9. Respondent impressed the Administrative Law Judge that he was a hard working, sincere individual. He truthfully and fully disclosed his convictions to the Board when he submitted his application for licensure, his testimony was credible, and has a good understanding of the destructive influence alcohol had on his life and his future. He fully accepts responsibility for his wrongdoings and seems to have learned an important life lesson from the experience. Respondent, however, has not met his burden of establishing that he has been rehabilitated to such an extent that to grant him a non-probationary license would be consistent with the public, safety and welfare.

10. The Board notes that the Proposed Decision prepared by the Administrative Law Judge did not include one of the Board's standard probation conditions – a requirement to complete a nursing course. The Board believes that this condition is necessary in alcohol abuse cases. In addition, the Board believes that if the examiner conducting the physical and/or mental health examination determines that the respondent is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or

alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then the respondent should further comply with the additional terms and conditions of probation.

11. Respondent has met his burden of establishing that he has been rehabilitated to such an extent that granting him a probationary license would not be contrary to the public health, safety, or welfare.

ORDER

The application of Edward Sanchez Padilla for licensure is hereby granted provided he has completed the licensure examination and all other licensing requirements. However, said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of three (3) years on the following conditions:

SEVERABILITY CLAUSE -

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

(5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

(6) **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further

hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the

Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his own expense, shall enroll and successfully complete the following course(s) which shall include but not be limited to a course on assaultive behavior and any course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) VIOLATION OF PROBATION - If a respondent violates the conditions of his probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the

probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(12) **LICENSE SURRENDER** - During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(13) **PHYSICAL EXAMINATION** - Within 45 days of the effective date of this decision, respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse, including a determination as set forth below in Condition 16, "Rule-Out Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish

good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(14) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse, including a determination as set forth below in Condition 16, "Rule-Out Substance Abuse Assessment." The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) RULE-OUT SUBSTANCE ABUSE ASSESSMENT - If the examiner conducting the physical and/or mental health examination determines that the respondent is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then the respondent must further comply with the following additional terms and conditions of probation.

(A) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program

prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(B) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(C) SUBMIT TO TESTS AND SAMPLES - Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(D) THERAPY OR COUNSELING PROGRAM - Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

This Decision shall become effective on August 21, 2011.

IT IS SO ORDERED this 22nd day of July 2011.

Jeannine K. Graves RN
JEANNINE K. GRAVES
BOARD PRESIDENT
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

EDWARD SANCHEZ PADILLA
3045 North Vagedes
Fresno, CA 93705

Applicant/Respondent.

Case No. 2010-353

STATEMENT OF ISSUES

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

Application History

2. On or about August 3, 2009, the Board received an Application for Licensure by Examination from Edward Sanchez Padilla ("Respondent"). On or about July 29, 2009, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 28, 2009.

STATUTORY PROVISIONS

3. Section 2736 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

4. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(3)(A) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

5. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

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6. Section 2762 of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Convictions)

7. Respondent's application is subject to denial under Code sections 2736, 2761, subdivision (f), and 480, subdivision (a)(1), in that Respondent was convicted of crimes substantially related to the qualifications, functions and duties of registered nurse, as follows:

a. On or about September 11, 2007, in the Superior Court of California, County of Fresno, in the case entitled, *People of the State of California v. Edward Sanchez Padilla* (Super. Ct. Fresno County, 2007, Case No. M07920802), Respondent was convicted on his plea of guilty of violating Vehicle Code section 23103, subdivision (a) (Reckless Driving [.07% B.A.C.]).

b. On or about September 18, 2008, in the Superior Court of California, County of Fresno, in the case entitled, *People of the State of California v. Edward Sanchez Padilla* (Super. Ct. Fresno County, 2008, Case No. M08923867), Respondent was convicted on his plea of guilty of violating Vehicle Code sections 23152, subdivision (b) (Drive While Having .08% Blood Alcohol Content, and More [.12%] with a Prior), a misdemeanor.

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